

STATE OF DELAWARE
PUBLIC EMPLOYMENT RELATIONS BOARD

**SUSSEX TECH EDUCATION
SUPPORT EMPLOYEES
ASSOCIATION, DSEA/NEA,**

Charging Party

**BOARD OF EDUCATION OF THE
SUSSEX TECHNICAL SCHOOL DISTRICT,**

Respondent.

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ULP NO. 03-08-401

PROBABLE CAUSE DETERMINATION

Sussex Tech Education Support Employees Association, DSEA/NEA (“STESEA”) is an employee organization ¹ within the meaning of Section 4002(h) of the Public School Employment Relations Act, 14 Del.C. Chapter 40 (hereinafter the “Act”), and the certified exclusive bargaining representative² within the meaning of Section 4002(i) of the Act, of all Custodians, Custodian Firemen, Maintenance and Groundskeepers employed by Sussex Technical School District. Respondent, Sussex Technical School District (“District”) is a public employer³ within the meaning of Section 4002(n) of the Act.

The unfair labor practice charge filed on August 18, 2003, alleges, inter alia: 1) STESEA expressed its desire to commence negotiations for a Collective Bargaining Agreement between the parties – to date, no agreement has been reached. 2) Due to severe weather conditions on Sunday, February 16, 2003, Governor Ruth Ann Minner declared a State of Emergency at 9:20 a.m. 3) Monday,

¹ “Employee organization” means any organization which admits to membership employees of a public school employer and which has as a purpose the representation of such employees in collective bargaining, and includes any person acting as an officer, representative or agent of said organization.

² “Exclusive bargaining representative” or “exclusive representative” means the employee organization which as a result of certification by the Board has the right and responsibility to be the collective bargaining agent of all employees in that bargaining unit.

³ “Public school employer” or “employer” means any board of education, school district, reorganized school district, special school district, and any person acting as an agent thereof.

February 17, was a scheduled holiday. 4) Nightshift custodians work five days per week, eight hours per day, beginning 12:00 midnight on Sunday and ending 8:00 a.m. on Friday. 5) The declared State of Emergency remained in effect until 6:00 a.m. on Tuesday, February 18, 2003. 6) Due to the declared State of Emergency, nightshift custodians were not required to report to work for their normal shift beginning at 12:00 midnight on Monday, February 17, 2003, and ending at 8:00 a.m. on Tuesday, February 18, 2003. 7) On Tuesday, February 18, 2003, the District notified the nightshift custodians that they were required to report to work at 8:00 a.m. 8) The nightshift custodians worked six (6) hours, from 8:00 a.m. to 2:00 p.m. (9) Petitioner alleges custom and practice in the District has been that an employee required to work beyond their normal shift or called in to work at a time other than their ordinary shift would receive pay or compensatory time at a rate of one and a half times their ordinary rate of pay. 10) On May 14, 2003, representatives of STESEA met with representatives of the District to discuss time and a half compensation of the nightshift custodians called in on February 18, 2003, by the Chief Custodian to work a modified shift beginning at 8:00 a.m., a time other than the nightshift custodians' ordinary shift. (11) By letter from the District to STESEA dated May 21, 2003, STESEA was advised that the nightshift custodians would not receive any extra compensation for work performed on Tuesday, February 18, 2003.

The Petitioner alleges violations of 14 Del. C. Section 4007(a)(5), of the Act.

The Respondent denies material allegations of the charge but admits that the daily schedule of nightshift custodians commences at 12:00 midnight and ends at 8:00 a.m. beginning midnight on Sunday.

Respondent further denies that custodian George Smith worked a total of 6 hours from 8:00 a.m. to 2:00 p.m., or that it was customary practice for employees required to work beyond their normal shift or called in to work at a time other than their ordinary shift to receive pay or compensatory time at a rate of one and a half times their ordinary rate of pay. Respondent alleges that past practice permits the District to modify the normal daily schedule to accommodate operational needs of the District.

APPLICABLE STATUTORY PROVISIONS

14 Del.C. Section 4007, Unfair Labor Practices, provides in relevant part:

- (a) It is an unfair labor practice for a public school employer or its designated representative to do any of the following:
 - (5) Refuse to bargain collectively in good faith with an employee representative which is the exclusive representative of employees in an appropriate unit.

DECISION

The petition alleges changes in the status quo of mandatory subjects of bargaining, to wit, hours and wages. Consequently, considered in a light most favorable to the Petitioner, the factual issues raised by the pleadings are sufficient to constitute probable cause to believe an unfair labor practice may have occurred.

IT IS SO ORDERED.

DATED: 26 September 2003

/s/Charles D. Long, Jr.
Charles D. Long, Jr.
Executive Director